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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/648,708

08/26/2003

Jeffrey Garfinkle

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03/28/2006

MCANDREWS HELD & MALLOY, LTD  
500 WEST MADISON STREET  
SUITE 3400  
CHICAGO, IL 60661

EXAMINER

GROSSO, HARRY A

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/648,708	Applicant(s) GARFINKLE, JEFFREY	
	Examiner Harry A. Grosso	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 8-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/26/03</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-7, drawn to a product, classified in class 220, subclass 1.5.

II. Claims 8-11, drawn to a method of using the product, classified in class 206, subclass 386.

2. Inventions of Group I and Group II are related as product and process of use.

The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product, a box structure can be used without a pallet such as covering an object placed on the floor or the ground or it can be used with a sixth side covering the opening to form a closed box.

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Ms. Priscilla Gallagher on January 25, 2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-7. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Spence (4,919,888). Spence discloses an open box structure (Figure 1) with four sides (20, 21, 22) and a wall (18) that can serve as a top with the opening of the box oriented in a down position. It has a first strap and second strap (46) that go across the opening of the box and attach to a first (20) and second (21) side of the box. The straps have openings (50), the sides have openings (32) and an attachment device (48) is inserted in the openings to secure the straps to the sides (column 4, lines 41-48).

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Loew et al (5,139,186). Loew et al discloses an open box structure with four sides (14, 16, 18, 20) and a wall (12) that can serve as a top with the opening of the box oriented in a down position. It has a first strap (24) that attaches to first and second sides of the box. The box and strap have openings (Figure 6) through which an attachment device (28) is inserted.

8. Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Vandivort (1,750,072)).

9. Regarding claims 1 and 2, Vandivort discloses an open box structure with four sides, a top (A) and a bottom that can be open with the removal of the bottom wall. It has a first strap (19, Figure 1) that attaches to first and second sides of the box (page 2, lines 40-43). The box has openings (8, Figure 3, page 1, lines 70-79) in which an attachment device (1) is inserted and the opening closest to the bottom of the box structure would be the second opening in the side of the box in which the first attachment device is inserted in accordance with the claims. The strap has openings for insertion of the attachment device.

10. Regarding claim 6, Vandivort discloses the strap (19) has plural openings spaced apart on the strap that can each be attached to the first attachment device, thus making it possible for the strap to have more than one attachment point for insertion of the first attachment device.

11. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoogland (4,998,425). Hoogland discloses an open box structure with four sides and a wall that can serve as a top with the opening of the box oriented in a down position. It has a first strap (48) that attaches to first and second sides of the box. The box has openings through which an attachment device (38) is inserted (Figures 3 and 4, column 3, lines 17-22). The strap has an opening (56) through which the attachment device is inserted and the attachment device includes a loop of a lock (64).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loew et al in view of Spence. Loew et al discloses as the invention except for the use of a second strap. Spence discloses the box structure and further discloses the use of two straps with openings that attach to opposite sides of the box structure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of two straps as disclosed by Spence in the box structure disclosed by Loew et al to provide for added securement for increased strength or provide a means for securing separate items within the box structure.

14. Claims 4, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vandivort in view of Overton III (3,414,152) (Overton).

15. Regarding claim 4, Vandivort discloses the invention except for the use of a second strap attached to opposite sides of the box. Overton discloses a box structure with four sides and a top and two intermediate straps (122, 124, Figure 1) going from one side of the box to an opposite side across the bottom of the box structure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of two intermediate straps going from one side of the box structure to an opposite side as disclosed by Overton in the box disclosed by Vandivort to provide added securement against bulging of the sides of the box.

16. Regarding claim 5, Vandivort as modified by Overton discloses the invention of claim 4 and Vandivort discloses a first strap (19) that attaches to first and second sides

of the box (page 2, lines 40-43). The box has openings (8, Figure 3, page 1, lines 70-79) in which an attachment device (1) is inserted and the opening closest to the bottom of the box structure would be the second opening in the side of the box in which the first attachment device is inserted in accordance with the claims. The strap has openings for insertion of the attachment device. I would have been obvious to have incorporated the same structure for the second strap and its attachment as disclosed by Vandivort for consistency of design and ease of manufacture. Attachment devices (1) are inserted in openings closest to the bottom of the box structure, which would be the second and fourth openings in the side of the box as defined in the claims for attachment of the first and second straps.

17. Regarding claim 7, the invention of claim 5 is disclosed and Vandivort discloses the strap (19) has additional openings spaced apart on the strap that can each be attached to the attachment device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the same strap design for both the first and second strap thus making it possible for each strap to have more than one attachment point for insertion of the attachment device allowing flexibility in the length of strap stretched over the open end of the box.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Nathan Newhouse  
Supervisory Patent Examiner  
Art Unit 3727

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